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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JONNI ISAAC,) Case No. 2:09-cv-05071-FVS
)
Plaintiff,) **AMENDED COMPLAINT FOR**
) **VIOLATION OF FEDERAL FAIR**
) **DEBT COLLECTION PRACTICES**
) **ACT, VIOLATION OF REVISED**
vs.) **CODE OF WASHINGTON,**
) **CHAPTER 19.16, AND INVASION**
SUTTELL & ASSOCIATES, PS,) **OF PRIVACY**
)
Defendant.)
)
)
)
)

I. NATURE OF ACTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA") and of the Revised Code of Washington,

AMENDED COMPLAINT FOR VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES ACT-5

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1 Chapter 19.16, both of which prohibit debt collectors from engaging in abusive,
2 deceptive, and unfair practices. Plaintiff further alleges a claim for invasion of
3 privacy by intrusion, ancillary to Defendant's collection efforts.
4

5 **II. JURISDICTION**

6
7 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).

8 **III. PARTIES**

9
10 3. Plaintiff, Jonni Isaac, is a natural person residing in the State of
11 Washington, County of Benton, and City of Kennewick.

12 4. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §
13 1692a(3), and a "debtor" as defined by RCW § 19.16.100(11).
14

15 5. At all relevant times herein, Defendant, Suttell & Associates, PS,
16 ("Defendant") was a company engaged, by use of the mails and telephone, in the
17 business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C.
18 §1692a(5).
19
20

21 6. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. §
22 1692a(6), and a "licensee," as defined by RCW § 19.16.100(9).
23

24 **IV. FACTUAL ALLEGATIONS**

25 7. At various and multiple times prior to the filing of the instant complaint,
26 including within the one year preceding the filing of this complaint, Defendant
27

1 contacted Plaintiff in an attempt to collect an alleged outstanding debt.
 2 Defendant's conduct violated the FDCPA and RCW § 19.16 in multiple ways,
 3 including but not limited to:
 4

- 5 a. Distributing to Plaintiff a written communication which simulates or is
 6 falsely represented to be a document authorized, issued, or approved by
 7 a Court of Washington State and which creates a false impression as to
 8 its source. Defendant used a process server to serve Plaintiff in or
 9 around July, 2008, with 2 documents, titled "Summons" and
 10 "Complaint." The first page of each document included a document
 11 header containing the words: "In the Superior Court of the State of
 12 Washington for Benton County." Overall, these documents resembled
 13 very closely an authentic "Summons" and "Complaint" as those words
 14 are used in everyday practice by attorneys and laymen. Although these
 documents were served in or around July, 2008, Defendant did not
 actually file the corresponding legal suit until February, 2009,
 approximately 7 months later.

15 Washington Courts do not "authorize" the practice of abusing the rules
 16 of legal process, or procedures that are in violation of Federal Law.
 17 Furthermore, the documents served upon Plaintiff created the
 18 impression in Plaintiff, and generally tend to create the impression in
 19 the mind of a least sophisticated consumer, that the documents were
 20 "issued" by a Court of Washington State. Regardless of whether
 21 Washington Civil Procedure provides for the service of an unfiled
 22 summons and complaint, the documents undoubtedly falsely represent
 23 to a least sophisticated consumer that they were issued by the State of
 24 Washington. The Summons and Complaint referred to are attached as
 Exhibits A and B respectively. An internet search result showing that
 Defendant filed suit against Plaintiff in February, 2009, is attached as
 Exhibit C (§ 1692e(9));

- 25 b. Threatening to take an action against Plaintiff that cannot be legally
 26 taken or that was not actually intended to be taken, including
 27 threatening to instigate a lawsuit by serving a Summons and Complaint
 in July, 2008, where the corresponding lawsuit was not actually filed

1 until February, 2009. Defendant misrepresented the imminence of legal
2 action and the same is established, in part, by the objective proof that
3 threatened action was not filed in the stated, implied, referenced, or
4 reasonable time frame. See Exhibits A-C (§ 1692e(5));

- 5 c. Failing to provide Plaintiff with the notices required by 15 USC §
6 1692g, either in the initial communication with Plaintiff, or in writing
7 within 5 days thereof, including failing to include the notice language
8 required by 15 USC § 1692g along with the "Summons" and
9 "Complaint" sent to Plaintiff in July, 2008. See Exhibits A & B (§
10 1692g(a));
- 11 d. Upon information and belief, filing a false affidavit or complaint in a
12 debt collection lawsuit. Plaintiff suspects that the Affidavit attested to
13 by Sharon Reubens and submitted to a court of law by Suttell &
14 Associates, was made without sufficient knowledge of the creditor's
15 account system and without sufficient knowledge of the creditor's basis
16 for determining that Plaintiff owes the allege debt. See Exhibit D. One
17 basis for Plaintiff's supposition is that the affidavit appears to be made
18 from a form and to be inappropriate to the facts of the case. The
19 affidavit states that the affiant is an agent of Capital One Bank,
20 successor in interest to Capital One Bank. The debt was not assigned
21 from Capital One Bank to Capital One Bank, and Defendant's
22 submission of this affidavit in support of its client's claims was a false
23 and misleading statement by Defendant (§ 1692e(10));
- 24 e. Using unfair or unconscionable means against Plaintiff in connection
25 with an attempt to collect a debt, including waiting an unfair length of
26 time before filing and prosecuting lawsuit for which process had been
27 served in August, 2008, but for which a corresponding lawsuit to
28 enforce the complaint was not filed until February, 2009. See Exhibits
A-C. Plaintiff was prejudiced by the unnecessary and unexplained
delay in prosecuting the lawsuit that Plaintiff believed such lawsuit was
imminent in August, 2008. Plaintiff relied to his detriment on the
imminence of the lawsuit and believed that the lawsuit had been
voluntarily dismissed when Defendant failed to actually file the suit (§
1692f)).

f. Collecting an amount from Plaintiff that is not permitted by law. When Defendant filed the lawsuit referred to above in February, 2009, Defendant asked the court to grant its client pre-judgment interest for each day leading up to the filing of the suit. Defendant's client was not entitled to the full amount of such interest as Defendant's client is required to mitigate its damages. Defendant failed to mitigate damages on behalf of its client by serving Plaintiff with process in August, 2008, but waiting until February, 2009, to file suit. Therefore, its request for full interest was an attempt to collect an amount not permitted by law. Attempting to collect an unlawful amount from Plaintiff in this manner was also an unfair practice, an abusive practice and a deceptive practice (§ 1692f(1); § 1692f; § 1692e(10); § 1692d).

8. As a result of Defendant's behavior, detailed above, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress.

**COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT**

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;

1 D. Costs and reasonable attorney's fees; and,

2 E. For such other and further relief as may be just and proper.

3 **COUNT II: VIOLATION OF WASHINGTON COLLECTION AGENCY**
4
5 **ACT, WHICH IS A PER SE VIOLATION OF THE WASHINGTON**
6 **CONSUMER PROTECTION ACT**
7

8 10. Plaintiff reincorporates by reference all of the preceding paragraphs.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff respectfully prays that judgment be entered
11
12 against the Defendant for the following:

13 A. Actual damages;

14 B. Discretionary Treble Damages;

15 C. Costs and reasonable attorney's fees,

16 D. For such other and further relief as may be just and proper.

17
18 Respectfully submitted this 11th day of January, 2010.

19
20 s/Jon N. Robbins

21 Jon N. Robbins

22 WEISBERG & MEYERS, LLC

23 Attorney for Plaintiff
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